

July 17, 2006

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

CAREER COUNSELING, et al., (Plaintiffs/Petitioners)

vs.

WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, (Defendant/Respondent)
SUPERIOR COURT NO. 05-2-01673-3

RULING BY THE HONORABLE RICHARD D. HICKS, DEPARTMENT 4
Court Reporter, Ralph H. Beswick, CCR (360) 786-5568

CONCLUSIONS OF LAW (*Section 7 only*)

The Department's CACO/SEM Rating System.

The legislature intended that the Department monitor VRC performance and the Department is allowed to use a formulaic performance-based monitoring system. At the same time, the legislature did not limit the Department to only using a formulaic performance system, and if such a system is chosen, it must be mathematically accurate and be true to the principles of statistics, including containing the proper inputs after a methodology study. The results then need to be measured against actual performance audits for validation. At the present time based on the evidence in this case the plaintiffs have proved clearly and cogently that the Department's CACO/SEM rating system is arbitrary, incomplete and statistically (mathematically) flawed and as a result does not give an accurate or just measure of quality and effectiveness of VRC performance and therefore does not meet the legislative intent set out in RCW 51.32.095 (5).

This is even a higher degree of certainty than would even be required to prove in this case. The current CACO/SEM formula is mathematically unsound and cannot be used for making a ranking until the deficiencies recognized and identified by Professor Nayak Polissar is repaired and corrected. The court declares that the current formula is invalid and contrary to the requirements of RCW 51.32.095 (5) and as such its use as the determinative factor in making referrals should be immediately halted by the Department. Upon application, the court will issue an injunction staying the use of the current system in its present form and application.

The Department is allowed to continue to use the formulaic approach, but a new one as described by Dr. Polissar, which may contain some of the same elements that are now being used, and perhaps consider certain results as triggering a performance audit as suggested by both Professor Polissar and Dwight Thompson. Designing this specific formula is beyond this court's authority or expertise. Until a new formula or other performance-based system that actually measures quality and effectiveness is devised, the threshold between eligible and conditional is hereby dissolved, though the efficiency ranking of cost, duration and outcome can continue to be a consideration – after all, a hierarchy of desired results is set out in 51.32.095 (2) – but it cannot be the controlling factor for making referrals since it does not give an accurate measurement of quality and effectiveness. However, the Department must continue to meet its legislative direction which can be done on a temporary basis using the current defective ranking as a non-controlling factor and without any threshold being recognized and then to be adjusted with the intelligence and experience of additional subjective input from claims managers until the new system is in place.